

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

H. LEIGHTON LASKEY,)
)
Plaintiff,)
)
v.) C.A. No. 06-018-JJF
)
PFC. ROBERT C. LEGATES,)
PFC. WHEATLEY and JOHN DOE,)
Supervisor on duty at)
Millsboro Police Department,)
)
Defendants.)

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S "AMENDMENT"
AND "AMENDED COMPLAINT" AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Pursuant to F.R.C.P. 12(b) (6), defendants move to dismiss plaintiff's "Amendment" and "Amended Complaint" for failure to state a claim upon which relief can be granted. The grounds for defendants' Motion are as follows:

1. Notwithstanding plaintiff's proposed July 26, 2006 "Amendment" (Exhibit A attached hereto) and July 29, 2006 "Amended Complaint" (Exhibit B attached hereto), the gist of his claim remains that defendant Town of Millsboro Police Officers did "involuntarily take evidence from plaintiff" (Exhibit B) by using force to take a blood sample after plaintiff had been arrested under suspicion of driving under the influence of alcohol. According to plaintiff, the officers' use of force was unreasonable because his "refusal was allowed under law." (Exhibit B).

2. Plaintiff's claim is still based solely on his allegation that force was used to draw blood against his will. Police officers are permitted to use force in taking a blood sample from a suspected drunk driver. Schmerber v. California, 384 U.S. 757, 760 (1966); McCann v. State of Delaware, 588 A.2d 1100, 1101-02 (Del. Supr. 1991). Moreover, plaintiff's Amended Complaint does not allege that the officer informed plaintiff of the penalty of license revocation for refusal to permit chemical testing. See McCann at 1102 (In the absence of a statement by the officer regarding the penalty for refusal force may be used to take a blood sample from a suspected drunk driver).

WHEREFORE, defendants requests that plaintiff's Complaint be dismissed with prejudice for failure to state a claim upon which relief can be granted.

AKIN & HERRON, P.A.

/s/ Bruce C. Herron
Bruce C. Herron
Attorney I.D. No.: 2315
1220 N. Market Street
Suite 300
P.O. Box 25047
Wilmington, DE 19899
(302) 427-6987
Attorney for Defendants

Dated: August 2, 2006

HONORABLE JUDGE
JOSEPH J. FARNAN JR.
U.S.DISTRICT COURT
844 N.KING STREET
WILMINGTON,DELAWARE
19801

CASE#06-018-JJF
AMENDMENT

1.ENTER THE TOWN OF MILLSBORO AS DEFENDANTS:

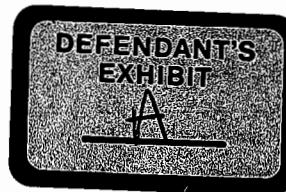
VIOLATION OF RIGHTS,ASSAULT: THAT THE TOWN OF MILLSBORO HAS COMMON POLICY THAT DIRECTS THE MILLSBORO POLICE DEPARTMENT TO USE UNREASONABLE AND EXCESSIVE FORCE TO OBTAIN EVIDENCE.

2.ENTER THE MILLSBORO POLICE DEPARTMENT AS DEFENDANTS: *VIOLATION OF RIGHTS*
Assault
THAT THE MILLSBORO POLICE DEPARTMENT ~~DIRECTS~~ POLICE TO VIOLATE CIVIL LAW AND USE UNREASONABLE AND EXCESSIVE FORCE TO OBTAIN EVIDENCE.

CONCLUSION
Officer Whately,OFFICER LEGATES UNDER DIRECTION OF COMMON POLICY DID USE UNREASONABLE AND EXCESSIVE FORCE TO OBTAIN EVIDENCE ON JANUARY 3 2004 AGAINST THE PLAINTIFF H.LEIGHTON LASKEY.

RESPECTFULLY
H. Leighton Laskey
H.LEIGHTON LASKEY
527 BALTIC AVE
BROOKLYN,MD.21225

cc.BRUCE HERRON



J. Fugitzyk, Esq.

attest that I have sent a copy of an
amended complaint to Bruce C. Hens
defense attorney at 1220 N. MARKET ST
SUITE 300 P.O. BOX 25047 WILMINGTON
DELAWARE 19899 on 7-26-06.

J. Fugitzyk
527 BRATIC AVE
BROOKLYN, NY 11225

HONORABLE JUDGE
JOSEPH J.FARNAN
U.S.DISTRICT CT
844 N.KING STREET
WILMINGTON,DE.19801

CASE#06-018-JJF
7-29-2006

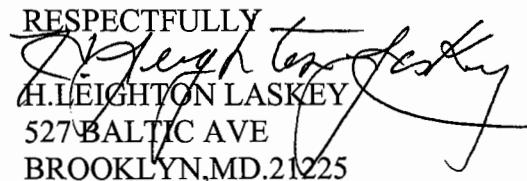
AMENDED
COMPLAINT

1)ENTER THE MILLSBORO POLICE DEPARTMENT 107 MAIN STREET
MILLSBORO,DELAWARE.19966 AS DEFENDANTS. ASSAULT, DENIAL OF RIGHTS
2)ENTER THE TOWN OF MILLSBORO 322 WILSON HWY.MILLSBORO
DELAWARE AS DEFENDANTS. ASSAULT, DENIAL OF RIGHTS

THAT ON JANUARY 3,2004
UNDER COMMON POLICY AND OR LACK OF PROPER POLICE TRAINING
OFFICER LEGATES AND OFFICER WHEATLEY DID PHYSICALLY ASSAULT
AND INVOLUNTARILY TAKE EVIDENCE FROM PLAINTIFF H.LEIGHTON
LASKEY AT BEEBE HOSPITAL. THAT PLAINTIFFS REFUSAL WAS ALLOWED
UNDER LAW AND WAS IGNORRED BY POLICE.EMOTIONAL AND PHYSICAL
INJURIES DID RESULT.

FURTHERMORE PLEASE
EXCUSE AMENDMENT DATED 7-26-06 FOR BEING INCOMPLETE.

I H.LEIGHTON LASKEY DO
ATTEST THAT A COPY WAS SENT TO THE DEFENDANTS ATTORNEY AT
1220 N.MARKET ST.P.O.BOX25047 WILMINGTON, DELAWARE 19899

RESPECTFULLY

H.LEIGHTON LASKEY
527 BALTIC AVE
BROOKLYN,MD.21225

